



May 5, 2011

Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Programmatic Environmental Assessment for Antenna Structure Registration Program; WT Docket No. 08-61 and WT Docket No. 03-187

Dear Commissioners:

On April 1, we participated in a public workshop convened to discuss the data sources, assumptions, and methodologies for the programmatic environmental assessment (PEA) of the Commission's antenna structure registration (ASR) program. The workshop, conducted by staff members of the Wireless Telecommunications Bureau (WTB), was very informative, and we appreciated the opportunity to hear and talk about the ongoing work in connection with the PEA. At that time, WTB staff and its contractor, URS, urged members of the public to provide written comments in response to the presentations that day in addition to any comments already submitted. These supplemental comments respond to that solicitation. As requested at the workshop, we are also providing copies to the URS representatives.

Introduction and Summary

We commend the Commission and URS for conducting the workshop. The materials and presentations provided a good summary of the methodology for the PEA and the work that has already been done. We particularly applaud the news that the PEA is on schedule, with a draft document to be published for public comment in June. We offer these additional comments to assist the Commission and URS in completing the PEA in accordance with the mandate set forth in the National Environmental Policy Act (NEPA) and guidance published by the Council on Environmental Quality (CEQ).

As set forth in greater detail below, we urge the Commission and URS to:

- (1) reconsider some of the assumptions, particularly two assumptions discussed at the PEA workshop (in addition to the five enumerated in the materials);
- (2) include information on lighting and projected tower locations as part of the impact analysis;
- (3) identify and evaluate, based on the peer-reviewed literature and consultation with the United States Fish and Wildlife Service (FWS) direct, indirect, and cumulative impacts at the species level where such data exist, or if not, for groups of species to determine population level impacts; and
- (4) significantly revise and develop the alternatives analysis by: (i) recognizing that the true “no-action” alternative is the ASR program as it currently operates, for which the impacts are documented in the literature; (ii) identifying the interim rule as an alternative option for analysis, for which the impacts may be hypothesized; (iii) developing Option A to describe the criteria for determining the circumstances under which a tower would need an EA and the circumstances under which a tower would need an EIS, as well as the projected numbers of towers in each category; and (iv) developing Option B to describe the four identified factors and how they would be used together, as well as projected numbers of towers under various scenarios, so that the potential impacts of this option may be evaluated. The alternatives analysis must also address how each of the alternatives will satisfy the FCC’s obligations to comply with all the environmental laws.

We are hopeful that the PEA will be a useful document for bringing the ASR program into compliance with the environmental laws and the order of the United States Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy v. FCC*, 516 F. 3d 1027 (2008) and form a solid basis for further environmental analysis of communications towers under the ASR program.

Assumptions

The materials prepared by URS list five assumptions for the PEA, the bottom line of which is that URS is assuming that new towers will be built in the same number, in the same manner, and at the same locations under all alternatives. This may be reasonable for the total number of towers, but if an option had a cutoff for height, location, and guy wires, below which no EA or EIS would be required, more towers might be built below that cutoff than above the cutoff.

Regarding the lighting on new towers, we do not disagree that changes are dependent upon changes in the FAA circular. However, the discussion of lighting impacts and alternatives should not end with that observation. Instead, the PEA should include assumptions about lighting changes and develop at least one alternative based on likely lighting changes as they might be implemented for new towers so that the potential impacts of these changes may be included in the analysis of the ASR program, as discussed later in this letter.

In addition to the five assumptions listed in the materials, the presenters postulated that there will be fewer tall towers built annually in the future.¹ We question the basis of that assumption for several reasons. First, the URS graph is predicting, based on past trends, that the total number of towers will increase from slightly more than 90,000 to more than 120,000 by 2020. Even if there are more of the shorter than taller towers built in the future, that will still mean a substantial increase in the number of taller towers. Second, the Commission staff is apparently basing their estimate at least in part on the slowdown in tower construction in last few years, but that could be attributable to the recession among other factors. Third, public safety towers (which appear to be increasing in number due to heightened security concerns) are generally tall, according to FCC staff at the workshop. Fourth, as noted in our prior comments, at 4, the projection of 16,000 new towers for the broadband buildout, principally in rural areas, would suggest that there will be substantial growth in the number of tall towers. We urge FCC staff and URS to consult representatives of industry and others regarding projections for the broadband buildout and other anticipated future needs.

The presenters also stated that they are assuming for purposes of the PEA that there will be no changes in existing towers. While it is true that FAA is in the process of considering changes to its circular on lighting styles, and we do not yet know what changes will be approved, the FAA's research study identifies changes that can easily be made and are likely to be made by tower owners and operators based on favorable economic considerations. And potential changes can be encouraged by the use of incentives. Thus, we urge URS to make some assumptions about how many existing towers may adjust their lighting schemes to eliminate steady burning lights, and we urge the Commission to work with the FAA to encourage the swift completion of its work on approved lighting styles and to explore various scenarios in the PEA in the alternatives analysis as discussed later in this letter.

Impact Analysis

The graphs showing the data on towers and direct bird impacts based on the literature provide some valuable information for understanding the background and magnitude of the impacts. More information is needed regarding lighting and projected locations of towers. For example, we believe the FCC has data on tower lighting, and that data should be included in the description of current conditions so that the current impacts of lighting can be assessed in context. For new towers, projections of potential lighting configurations, i.e, with and without FAA changes, should be made as the basis for projecting future impacts. Regarding locations, there is no acknowledgment that future towers to be constructed as part of the broadband buildout will be in rural areas where there has not previously been significant tower construction.

Furthermore, the use of aggregate bird data, as opposed to species level data, does not tell the real story. The PEA must reflect species level impacts where the data exist or if not,

¹ When asked to define "tall" towers for this projection, FCC staff clarified that "tall" towers were towers subject to regulations under the ASR program.

impacts for groups of species so that population level impacts are identified and evaluated.

As noted in recent studies by Travis Longcore, et al., identified in the PEA bibliography as documents Nos. 106 and 107, the focus should be on species-specific impacts. On a species-specific basis, impacts at population levels are a significant environmental concern. The importance of species level impacts is also relevant for an evaluation of indirect impacts. For example, grouse will not nest if their habitat is bifurcated by towers or roads leading to towers. Prairie chickens will abandon otherwise suitable habitat where structures such as towers attract birds of prey and provide perching sites. These types of indirect impacts, together with identified direct impacts, may be significant enough to jeopardize the continued existence of endangered bird species. Similarly, cumulative impacts should be evaluated at the species level or at least at the group of species level. The pie chart included in the URS materials, summarizing annual avian mortality by source and ascribing to communications towers an aggregate impact of less than one percent of avian mortality does not meaningfully describe the impacts because impacts on specific species can be significant at population levels.

As noted by URS representatives at the workshop, impacts to avian habitat from tower construction and operation can be significant and should be part of the impact analysis. The FWS has done a great deal of analysis of impacts on avian species and their habitats from different types of development. For example, to assess the impacts on birds and their habitats from wind energy development, the FWS is developing voluntary guidelines regarding wind energy development. We urge FCC staff and URS to consult with FWS and incorporate relevant information in those guidelines in the PEA. See http://www.fws.gov/windenergy/docs/Wind_Energy_Guidelines_2_15_2011FINAL.pdf

Regarding indirect impacts, we also urge URS to include an evaluation of bird kills that result indirectly from the disruption of birds' navigational cues caused by towers. Particularly because of steady-burning tower lights, birds fly around the towers exhausting themselves to the point where they are unable to complete their migration and die en route.

The impact of climate change, while acknowledged in the materials, is not discussed. It is well documented that the northern range of many species is expanding northward, and there is no question that these changes in migration patterns are in response to climate change. These changes in bird migration patterns are part of the cumulative impacts that need to be considered at the species level where the data exist or for groups of species in order to meaningfully identify and evaluate the full range of impacts for purposes of the PEA.

Alternatives Analysis

1. "No action" alternative

The “no action” alternative, as set forth in the materials and presentations at the meeting, is the ASR program with the interim procedures outlined in the MOU submitted jointly to the FCC by industry and environmental groups. That is inconsistent with CEQ guidance. While it would be reasonable for the Commission staff and URS to consider the interim procedures as an alternative (and we made that recommendation in our earlier comments), the interim procedures are not properly described as the “no action” alternative since they do not represent the present course of action, i.e. the status quo.

CEQ guidance is clear on this point. Asked what is meant by the “no action” alternative, CEQ’s response in its list of “40 Frequently Asked Questions” is as follows:

There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, *the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed.*

FAQ No. 3 (emphasis supplied). See <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>. Applying that logic to the ASR program under review, the “no action” alternative is the ASR program as it currently exists, before adoption of any interim procedures.

This makes sense since the interim procedures have just been published for comment and may change in response to public comments. There is no data on their impacts, and it would be impossible to describe with any degree of confidence the impacts of not-yet-adopted interim procedures and to meaningfully compare them to the hypothetical impacts of the alternatives. The “no action” alternative is meant to be the present course of action against which reasonable but hypothetical alternatives are to be compared. As stated by CEQ in its response No. 3, the “no action” alternative “provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives.” Id. To comply with CEQ guidance, the “no action” alternative must be revised accordingly, and the interim procedures may then be analyzed as one of the options.

2. Option A

Option A, described as requiring “an EA (or EIS)” for all tower applications, was not discussed in any detail at the workshop. Thus, it is unknown what methodology would be used for determining what types of towers would require an EA and what types would require an EIS. Beyond that, a full description of Option A would include a projection of how many towers fit into each category. Without that information, URS cannot hypothesize the impacts of this option.

3. Option B

Option B, described in minimal fashion, would require an EA or EIS for some proposed towers based on factors including height, location in an environmentally sensitive area, use of guy wires, and use of steady burning lights. Based on the research, these are appropriate factors. However, the draft PEA must explain each of them in detail and how they will be used together to determine what towers are likely to have no significant impacts, what towers need EAs, and what towers need EISs. Beyond that, a full description of Option B would include a projection of how many towers fit into each category for each of the factors or combination of factors. Without that information, URS cannot hypothesize the impacts of this option.

i. Height

The FCC's database and the research literature document the numbers of towers at various heights and bird impacts. Based on that information, URS should create three categories of towers by height, one of which is deemed likely to have no significant impacts, one of which would require an EA to determine whether the tower needs further review, and one of which would require an EIS based on likely impacts. Without this level of specificity, the PEA will not be provide sufficient background for further environmental analysis of ASR towers.

ii. Location in an environmentally sensitive area

First, regarding the definition of an environmentally sensitive area, we urge the Commission and URS to consult with FWS and review the Service guidelines for wind energy development, which recognize the importance of siting to avoid, minimize, and mitigate impacts on avian species. See http://www.fws.gov/windenergy/docs/Wind_Energy_Guidelines_2_15_2011FINAL.pdf

Second, it is unclear how this factor will be used in determining what towers need environmental review. If URS were intending to limit environmental review only to towers in these areas, that would be totally inconsistent with available data on bird mortality, and so we assume that is not the intent of including this factor. Instead, we believe this factor is intended to address locations that need to be reviewed with special attention because they are environmentally sensitive. In such circumstances, for example, there would be no towers that are likely to have no significant impacts. Indeed, in these circumstances, all towers might require an EIS. Or, if the sensitivity level of these areas could reasonably be subdivided into two groups, the group with less likelihood of having adverse impacts might require an EA in the first instance while the other group would require an EIS.

iii. Use of guy wires

As the presenters acknowledged, the data on guy wires needs further review because references in the studies to guy wires and wire sets do not always indicate with sufficient clarity the guy wire configurations. We urge URS to probe this data so that the characteristics of guyed towers can be described accurately and URS can then determine if there is any basis on which to separate guy wire configurations into subgroups based on their likely impacts.

iv. Use of steady burning lights

As noted elsewhere in these comments, a consideration of lighting impacts and alternatives should be included in the PEA even though the FAA has not yet determined what changes will be made to the FAA circulars on lighting styles. The FAA conspicuity research study is complete, and it includes recommendations that can inform URS in making reasonable assumptions and predicting potential impacts based on those recommendations. Without this, the PEA will be of limited utility for tiering to further environmental review of towers.

Regarding proposed towers, it would be relatively straightforward for URS to postulate the changes recommended in the study and to extrapolate the likely impacts if the FCC makes the changes mandatory for approval of ASR towers. If the changes are only voluntary, the PEA would need to include the Commission staff's best estimate or range of estimates of the percentage of towers that would not include steady burning lights.

Alternatives regarding the use of steady burning lights should also include a consideration of existing towers. As noted earlier in these comments, the study report describes a number of changes that can be made easily at existing towers of specified heights and notes that those changes would be economic for the companies to make. Thus, it is reasonable to project that if the FAA adopts the changes recommended in the study report at least some of the changes will be made on existing towers. With assistance from the FAA and others, including industry representatives, the Commission and URS should be able to describe an alternative that includes these likely changes and evaluates their potential impact.

While a consideration of lighting changes, particularly for existing towers, is speculative, it is important for the Commission and URS to include their best estimates in this regard. With this discussion, the PEA can be a valuable tool for tiering to EAs and EISs for individual towers while the interim rule is in place and for consideration of comprehensive revisions to the ASR regulations.

4. Compliance with all environmental laws

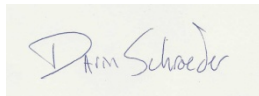
The discussion of reasonable alternatives must take into account the Commission's legal obligations not just under NEPA, but also the other applicable environmental laws, i.e. the Endangered Species Act (ESA), the Migratory Bird Treaty Act (MBTA), and the

Bald and Golden Eagle Protection Act (BGEPA). As noted by a FWS official at the workshop, the FWS has published draft Eagle Conservation Plan Guidance under the BGEPA regarding programmatic permits for the take of eagles. The Commission should work with FWS to harmonize the requirements of that Act with the range of reasonable alternatives for consideration under the ASR program.

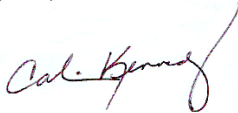
Conclusion

We are pleased that the Commission and URS are working together to complete the PEA for the ASR program and are encouraged by the ongoing efforts as reported at the workshop. This is the first step in a process to identify and evaluate the full scope of environmental impacts of communications towers and all reasonable alternatives for addressing the environmental impacts of the ASR program. We offer the foregoing comments to assist in that process to ensure sound decisionmaking and compliance with the Commission's obligations under the environmental laws.

Respectfully submitted,



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